

Department of the Treasury
Internal Revenue Service

Release Number: 201037030
Release Date: 9/17/10
Date: 6/24/10

LEGEND

ORG = Organization name XX = Date Address = address

501.03-00

ORG
ADDRESS

Person to Contact:
Identification Number:
Contact Telephone Number:
In Reply Refer to: TE/GE Review Staff
EIN:

Dear

This is a Final Adverse Determination Letter as to ORG'S exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

ORG has not been operating exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). You are also not a charitable organization within the meaning of Treasury Regulations section 1.501(c)(3)-1(d). You are not an organization which operates exclusively for one or more of the exempt purposes which would qualify it as an exempt organization. You operate substantially for a non-exempt purpose, for private benefit, and its earnings inure to the benefit of the founders of the organization.

Based upon these reasons, your IRC section 501(c)(3) tax exempt status is revoked effective January 1, 20XX. You have signed Form 6018, "Consent to Proposed Action", agreeing to the revocation of your exempt status under section 501(c)(3) of the Code.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Form 1120, "US Corporation Income Tax Return" for all open years with the appropriate Service Center indicated in the instructions for the return.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling (213) 576-3140, or writing to: Internal Revenue Service, Taxpayer Advocates Office, 300 N. Los Angeles Street, Stop 6710LA, Los Angeles, CA 90012.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations



DEPARTMENT OF THE TREASURY

Internal Revenue Service
Exempt Organizations
2525 Capitol Street #217
Fresno, CA 93721-2227

August 31, 2009

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Francisco N. Favila
Revenue Agent

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31, 20XX
ORG EIN		

LEGEND

ORG = Organization name XX = Date City = city State = state
 Secretary = secretary Founder = founder Founder-1 = founder-1 CO-
 1, CO-2, CO-3, CO-4, CO-5, CO-6, CO-7 & CO-8 = 1ST, 2ND, 3RD, 4TH, 5TH, 6TH, 7TH *
 8TH COMPANIES

Issue:

Should the tax exempt status granted to ORG be revoked due to the manner in which the organization is operating?

Facts:

ORG, the ORG, was granted tax exempt status from Federal income tax under Internal Revenue Code, IRC, 501 (a) as an organization described in IRC 501 (c) (3) in May 19XX. The ORG's primary exempt purpose is to rescue abandoned horses bound for slaughter, provide medical attention if needed, and make efforts to place the rescued horses with caring families.

The ORG provided very minimal income and expense records during the examination conducted in April of 20XX, for the period ending December 31, 20XX. According to the Executive Director, the ORG was a victim of a burglary in which record files were stolen. The ORG provided a copy of a County of City Sheriff's Department Supplementary Loss Report stating that 60 files were stolen. The report was completed and signed by the Executive Director on May 28, 20XX.

The CO-1 credit card statements the ORG provided showed questionable and unsupported purchases. The questionable purchases were made at retailers that do not provide services or merchandise that would further the ORG's exempt purpose. Some of the listed retailers were CO-2s, T shirt and CO-3, CO-4, CO-5, and CO-6.

The ORG provided copies of documents related to stolen checks that were deposited into the ORG's checking account. The two checks in question total \$. The copies of the checks clearly show that the intended payee's name was crossed out and the initials ORG were entered on one check and ORG on the other. The report shows that FOUNDER, the founder of the ORG, stated that the checks were stolen by her former roommate.

A copy of a CO-7 letter, dated August 9, 20XX and addressed to the ORG, stated that the ORG's checking account received credit for at least one of the checks on June 10, 20XX. The letter also stated that because the bank received a forgery claim against the check deposited into the ORG's account, the bank was withdrawing \$ from the same account.

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ORG EIN		

A copy of the ORG's CO-7 statement covering the period ending on June 27, 20XX showed that a \$ deposit was made on June 10, 20XX. The statement's daily balance summary shows a \$ balance on June 10 and a \$ balance on June 27, 20XX.

The ORG's president stated that the ORG received several CO-8 Travelers Checks as donations, but could not recall the exact number or time frame. The founder purchased a washing machine and a dryer from Sears with the checks. The checks were later determined to be forgeries and the founder was soon after arrested. The founder was convicted, among other charged, of two counts of Penal Code 476 on February 29, 20XX in the Superior Court of State, County of City, case number #. Penal Code 476 states that a person making, passing, or possessing of fictitious or altered checks with the intent to defraud is guilty of forgery.

The current Executive Director provided copies of the Minutes of the organizational meeting that took place on March, 28, 20XX. According to the document Secretary attended the meeting and serves as the ORG's Secretary. Secretary is the CPA who completed the ORG's second 20XX amended F990. Secretary said that he did not attend the meeting and is not serving as the Secretary or any other position in the ORG.

Law;

IRC 501(a) states that an organization described in subsection (c) or (d) or IRC 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under IRC 502 or IRC 503.

IRC 501(c) (3) states that corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

IRC 6001 provides that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such

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person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

IRC 5603 provides that any person required by this chapter (other than subchapters F and G) or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document, who, with intent to defraud the United States, shall fail to keep any such document or to make required entries therein; or make any false entry in such document; or cancel, alter, or obliterate any part of such document or any entry therein, or destroy any part of such document or any entry therein; or hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts there from; or fail or refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto; or who shall, with intent to defraud the United States, cause or procure the same to be done, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, for each such offense.

Government's Position:

The ORG was unable to provide the necessary records as required by IRC 6001. Although it is possible that the records were stolen, it is very improbable. The police report is not a confirmation by the police that the records were stolen, but rather, serves as a record provided by the victim as to what was supposedly stolen.

The limited expense records show that private inurement exists. The founder made purchases for personal benefit utilizing the ORG's credit card.

The stolen checks are also inurement to the founder. The stolen checks were deposited into the ORG's checking account on June 10, 20XX. The founder was aware of the theft by July 11, 20XX, or possibly earlier, when the police made contact. The bank statement cut off date was June 27, 20XX; as a result the bank statement would have been mailed to the ORG in late June and in the ORG's possession by early July, 20XX. Even in the unlikely possibility that the founder was unaware of stolen checks and their subsequent deposit to the ORG's checking account prior to July 11, 20XX; the founder did not return the money to the appropriate owner once she became aware of the theft. A forgery claim had to be filed by the victim and bank had to withdraw the money from the ORG's checking account and return it to the owner on August 9, 20XX. It is evident that despite being aware of the theft and the police intervention, the founder was not compelled to return the stolen funds on her own.

The fictitious travelers checks, supposedly received by the ORG, negotiated by the founder may also be considered inurement. The ORG's President and Executive Director were unable or unwilling to provide all the pertinent facts during the examination, but it is a fact that the court

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Name of Taxpayer ORG EIN		Year/Period Ended December 31, 20XX

convicted the founder of forgery related to the travelers checks. Considering the facts and circumstances regarding the traveler's checks, it is very probable that the ORG's name was used, by the founder, as the payee on the forged checks. Although not outside the realm of possibility, it is very unlikely that a person forged the traveler's checks and then made a charitable contribution to the ORG. It is also very unlikely that a person unknowingly receiving a forged check would be convicted of forgery. The purchase of a washer and a dryer by the founder with the donated funds is considered inurement.

The Executive Director provided false documents related to a Board of Directors meeting during the examination. The question of whether or not the facts and circumstances in this particular case may or may not meet all the criteria in IRC 5603 is not being addressed in this report.

Given the manner in which the ORG is operating, and considering the facts and circumstances, it is the government's position that the tax exempt status granted to the ORG be revoked.

Taxpayer's position:

The tax payer did not provide a written response to the propose revocation. On October 10, 20XX FOUNDER-1 called to say that he was not going to respond to the L3618, but that he agreed with the revocation. POA, POA, signed F6018 on October 26, 20XX.

Conclusion:

ORG's tax exempt status will be revoked.